

**Matter of Local 100, Transp. Workers Union of
Greater N.Y. v City of New York Dept. of Citywide
Admin. Servs.**

2004 NY Slip Op 30382(U)

September 23, 2004

Supreme Court, New York County

Docket Number: 103015/04

Judge: Doris Ling-Cohan

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 62

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In the Matter of the Application of
LOCAL 100, TRANSPORT WORKERS UNION OF
GREATER NEW YORK,

Petitioner,

for an Order and Judgment Pursuant to Article 78
of the Civil Practice Law and Rules,

Index No. 103015/04

Motion Seq. No. 001

-against-

CITY OF NEW YORK DEPARTMENT OF CITYWIDE
ADMINISTRATIVE SERVICES,

Respondent.
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DORIS LING-COHAN, J.S.C.:

Petitioner Local 100, Transport Workers Union of Greater New York (hereafter, Local 100), is the union local which represents the non-supervisory operational and maintenance employees of the New York City Transit Authority (hereafter, TA). Respondent City of New York Department of Citywide Administrative Services (hereafter, DCAS), is a municipal civil service commission with the responsibility, inter alia, for personnel administration of New York City's municipal and agency employees, including, but not limited to, the scheduling and conducting of examinations for positions in the civil service. New York City Charter §§ 814 (a) (1)-(a) (5).

The heart of the parties' dispute is DCAS' decision to cancel a promotional examination for the position of TA station agent (i.e., token booth clerk). The promotional examination had given incumbent TA employees in lower-tier categories, principally those

with responsibility for cleaning TA facilities and protecting its property (hereafter, cleaner titles), an opportunity to seek a promotion to station agent without competition from applicants from the general public.

Local 100 seeks declaratory and injunctive relief against what it characterizes as DCAS's "arbitrary and capricious cancellation of the promotional exam," in violation of Civil Service Law §52, which governs the administration of promotional civil service examinations for civil service positions in the competitive class.

DCAS cross-moves to dismiss the petition, pursuant to CPLR 3211 (a) (7), on the ground that the petition fails to state a cause of action upon which relief may be granted.

According to the allegations of the petition, which are deemed to be true on a motion to dismiss, (see Matter of Federation of Mental Health Ctrs. Inc. v DeBuono, 275 AD2d 557, 561 [3d Dept 2000]), for approximately twenty years, it had been the practice of DCAS to give both a promotional examination for the position of station agent, and a second, open-competitive test for station agent. The latter test was open to the general public. The timing of the tests meant that incumbent employees on the promotional list had to be considered for employment as a station agent before resort was had to the candidates from the open-competitive list.

According to Local 100, in December 2003, DCAS cancelled the scheduled April 2004 promotional examination for station agent on its website, which in effect meant that the preference previously accorded to incumbent employees in the cleaner titles has been eliminated.

Upon inquiry from the TA, which requested that the promotional test be reinstated

after it was cancelled, DCAS explained that its decision to eliminate the promotional examination arose from the discontinuance of the practice of having employees in the cleaner titles relieve station agents when the latter took meal or comfort breaks. DCAS reasoned that, since this practice had been discontinued, the form of informal, in-service training in assisting customers and operating the ticket booth which had resulted therefrom no longer existed, and thus, no longer provided a basis for the administration of a promotional examination.

However, according to the allegations of the petition, and an affidavit submitted by a member of Local 100, who is employed in one of the cleaner titles, cleaner title employees have never discontinued the practice of relieving station agents during the latter's break periods. In fact, it remains a job requirement that they do so.

Given the procedural posture of the proceeding at this point, DCAS has not filed an answer, but tellingly, while directly addressing the other salient points raised by the petition, in respondent's memoranda of law, respondent has chosen to essentially avoid the issue of whether DCAS was operating under a mistake of fact when it cancelled the subject promotional examination.

Clearly, DCAS is correct, in that respondent was never mandated to provide a promotional examination to the cleaner titles for the station agent position in the first instance.

Civil Service Law § 51 (1) provides:

Upon the written request of the appointing officer stating his reasons therefor, or on its own initiative, the ... appropriate municipal commission may determine to conduct an open competitive examination for filling a vacancy

or vacancies instead of a promotion examination.

Civil Service Law § 52, upon which petitioner purports to rely, states

in pertinent part:

1. Filling vacancies by promotion. Except as provided in section fifty-one, vacancies in positions in the competitive class shall be filled, as far as practicable, by promotion from among persons holding competitive class positions in a lower grade in the department in which the vacancy exists, provided that such lower grade positions are in direct line of promotion, as determined by the ... municipal commission, except that where the ... municipal commission determines that it is impracticable or against the public interest to limit eligibility for promotion to persons holding lower grade positions in direct line of promotion, such ... commission may extend eligibility for promotion to persons holding lower grade positions in direct line of promotion, such ... commission may extend eligibility for promotion to persons holding competitive class positions in lower grades which the ... commission determines to be in related or collateral lines of promotion, or in any comparable positions in any other unit or units of governmental service and may prescribe minimum training and experience qualifications for eligibility for such promotion...

According to documentation attached to the petition, the cleaner titles are in related or collateral lines to the station agent line. Therefore, the prior practice of extending promotional eligibility to the cleaner titles was discretionary, as opposed to mandatory.

In an Article 78 proceeding such as this, the court cannot interfere with an administrative tribunal's exercise of discretion unless there is no rational basis for that exercise of discretion, or the action complained of is arbitrary and capricious. Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, 34 NY2d 222, 231 (1974). An arbitrary action is one taken without a sound basis in reason, and is generally taken without regard to the facts. Matter of Heintz v Brown, 80 NY2d 998 (1992). By extension, if the decision to cancel the promotional

examination was based upon erroneous facts, it was made without a sound basis in reason.

Accordingly, the petition states a cause of action cognizable under CPLR Article 78; whether or not petitioner will ultimately be entitled to the remedy which it seeks is not the issue at this early juncture. See Matter of Nowlin v Schriver, 269 AD2d 630 (3d Dept 2000).

Accordingly, it is

ORDERED that respondent's cross-motion to dismiss the petition is denied; it is further

ORDERED that respondent shall serve its answer upon petitioner within 20 days of service of this order with notice of entry; it is further

ORDERED that petitioner may re-notice this matter in accordance with CPLR §7804(f); and it is further

ORDERED that within 30 days of entry of this order, petitioner shall serve a copy upon respondent with notice of entry.

Dated: September 23, 2004

HON. DORIS LING-COHAN



DORIS LING-COHAN, J. S. C.